



DeKalb County Government

Manuel J. Maloof Center
1300 Commerce Drive
Decatur, Georgia 30030

Agenda Item

File ID: 2018-1794

Substitute

3/12/2018

Public Hearing: YES NO

Department: Executive Assistant - Chief Operating Office

SUBJECT:

Conveyance of the remaining Tucker park property to the City of Tucker and related intergovernmental agreement.

Commission District(s): All

Information Contact: Zachary Williams, Chief Operating Officer and Executive Assistant

Phone Number: 404-371-2174

PURPOSE:

To consider approving the conveyance of the remaining park property located within the City of Tucker to the City pursuant to the attached intergovernmental agreement between the County and the City of Tucker.

NEED/IMPACT:

This conveyance and intergovernmental agreement is intended to establish the transition and management of certain park property and services, and signifies a mutually beneficial and cooperative working relationship between the two governments.

FISCAL IMPACT:

The City shall pay \$100 per acre for the park property listed and attached to the proposed intergovernmental agreement pursuant to statute.

RECOMMENDATION:

Authorize the Chief Executive Officer to execute the attached Intergovernmental Agreement, subject to the City's final approval, and to execute all necessary documents in connection with the conveyance of the park property listed therein in a form acceptable to the County Attorney or her designee.

**INTERGOVERNMENTAL AGREEMENT
FOR THE TRANSFER OF PARK PROPERTY BETWEEN DEKALB COUNTY,
GEORGIA AND THE CITY OF TUCKER, GEORGIA**

THIS INTERGOVERNMENTAL AGREEMENT is entered into by and between DeKalb County, Georgia (“County”) and the City of Tucker, Georgia (“City”).

WHEREAS, the County is a constitutionally-created political subdivision of the State of Georgia;

WHEREAS, the City of Tucker is a municipality created by the Georgia General Assembly in 2015, pursuant to House Bill 636; and

WHEREAS, the County and the City desire to maintain a mutually beneficial, efficient and cooperative relationship, that will promote the interests of the citizens of both jurisdictions, including, but not limited to, the creation and preservation of park space;

NOW THEREFORE, in consideration of the following mutual obligations, the County and City (collective, the “Parties”) agree as follows:

**ARTICLE 1
PURPOSE AND INTENT**

The purpose of this Agreement is to provide the terms by which the County shall transfer the Park Property to the City.

**ARTICLE 2
COMPENSATION AND CONSIDERATION**

2.1 The real property that is the subject of this Agreement is further listed and described as attached hereto as Exhibit “A” (collectively, the “Park Property”). The Park Property shall be transferred and conveyed, subject to the provisions herein, in exchange for payment to the County in the amount of One-Hundred Dollars (\$100) per acre pursuant to O.C.G.A. § 36-31-11.1.

2.2 As part of said conveyance, it is further agreed that:

- a. The County shall convey the respective Park Property to the City pursuant to this Agreement and record the quitclaim deed following the purchase of all Park Property listed on Appendix A hereto in accordance with O.C.G.A. 36-31-11.1(g).
- b. The City shall take over all park and recreation services for all Park Property as of April 1, 2018, and shall indemnify the County as to any claim which arises from April 1, 2018 forward from the alleged performance or failure to perform such park and recreation services. For the purposes of this section, *park and recreation services* means those leisure time services, recreational opportunities and cultural activities as provided in the parks, open spaces, recreational facilities and other

county designated properties as of the date of this Agreement, and include, but are not limited to general recreation, athletic programs, and cultural opportunities; whether located at recreation centers, multi-use courts, playgrounds, aquatic facilities or golf courses for all ages and abilities.

- c. The County agrees to contribute to the City ad valorem tax revenue received for park and recreation services within the City during 2018 upon receipt of such funds from the Tax Commissioner. Such amount shall be decreased by 25%, representing the three (3) months during which the County provided services to the Park Property.
- d. The City hereby agrees to operate and maintain the Park Property and related greenspace, open space and recreational facilities. The Park Property shall be used and maintained pursuant to O.C.G.A. 36-31-11.1.
- e. Residents of the unincorporated area of the County shall have the same access to the Park Property as is allowed for residents of the City at the same cost charged to City residents, if any; and the same parks and recreation services being provided on or related to the Park Property shall be made available to residents of unincorporated DeKalb County as made available to residents of the City, at the same cost charged to City residents, if any.
- f. The Parties agree that, whether or not recorded, the provisions and obligations in this Section shall continue as binding restrictive covenants upon the Parties after expiration or termination of this Agreement.

2.3 As to all Park Property herein, the City shall be solely responsible for identifying and conducting due diligence at the City's cost, including, but not limited to all surveys, environmental reports, and title searches.

2.4 The Parties agree that all public stormwater facilities, ponds, basins and dams located within the City of Tucker (hereinafter, collectively the "Stormwater Systems") shall remain the property of the County as part of the County Stormwater System, and shall require separate intergovernmental agreements to include easements for access and maintenance. In no event, however, shall the County be obligated to maintain, undertake or expend monies on the above Stormwater Systems except where required by law, mutual written consent or by separate agreement. As part of this transaction and conveyance, the City shall execute all access and easement documents requested by the County which are related to and necessary for the County to access, connect, and repair all stormwater, sewer, and water pipes, drainage, and utilities located on the Park Property, including, but not limited to a 20-foot easement on either side of the centerline of any water and sewer lines located on the Park Property which are currently being maintained by the County and for the future maintenance and replacement of such lines (collectively, the "Utility Easements").

**ARTICLE 3
MUTUAL WAIVER AND RELEASE**

3.1 The City hereby waives and releases, effective the date the City receives the quitclaim deed, any right to pursue or initiate any legal claims against the County related to the transfer and conveyance of the Park Property, except for the right to assert claims to enforce the terms of this Agreement. The City agrees never to file any demand, claim, interpleader, charge, lawsuit or any other legal proceeding with any court, arbitration forum or government agency asserting any matter, claim or cause of action that is settled or released by this Agreement.

3.2 The County hereby waives and releases, effective the date the City receives the quitclaim deed, any right to pursue or initiate any legal claims against the County related to the transfer Park Property, except for the right to assert claims to enforce the terms of this Agreement. The County agrees never to file any demand, claim, interpleader, charge, lawsuit or any other legal proceeding with any court, arbitration forum or government agency asserting any matter, claim or cause of action that is settled or released by this Agreement.

**ARTICLE 4
REMEDIES**

The parties reserve all available remedies afforded by law to enforce any term or condition of this Agreement.

**ARTICLE 5
NOTICES**

All required notices shall be given by certified first class U.S. Mail, return receipt requested. The parties agree to give each other non-binding duplicate facsimile or e-mail notice. Future changes in address shall be effective upon written notice being given by the City to the County Executive Assistant or by the County to the City Manager via certified first class U.S. mail, return receipt requested. Notices shall be addressed to the parties at the following addresses:

If to the County:
Executive Assistant
1300 Commerce Drive, 6th Floor
Decatur, Georgia 30030

With a copy to:
County Attorney
1300 Commerce Drive, 5th Floor
Decatur, Georgia 30030

If to the City:

City Manager
City of Tucker
4119 Adrian Street
Tucker, GA 30084

With a copy to:
City Attorney
City of Tucker
4119 Adrian Street
Tucker, GA 30084

**ARTICLE 6
AMENDMENT OF AGREEMENT**

This Agreement may be amended at any time by mutual consent of both parties so long as such amendment is in writing and approved by official action of the City Council and approved by official action of the County governing authority.

**ARTICLE 7
NON-ASSIGNABILITY**

Neither party shall assign any of the obligations or benefits of this Agreement.

**ARTICLE 8
ENTIRE AGREEMENT**

The parties acknowledge, one to the other, that the terms of this Agreement constitute the entire understanding and Agreement of the parties regarding the subject matter of the Agreement. This Agreement constitutes the entire understanding and agreement between the Parties concerning the subject matter of this Agreement and supersedes all prior oral or written agreements or understandings. No representation oral or written not incorporated in this Agreement shall be binding upon the City or the County. All parties must sign any subsequent changes in the Agreement.

**ARTICLE 9
SEVERABILITY, VENUE AND ENFORCEABILITY**

9.1 If a court of competent jurisdiction renders any provision of this Agreement (or portion of a provision) to be invalid or otherwise unenforceable, that provision or portion of the provision will be severed and the remainder of this Agreement will continue in full force and effect as if the invalid provision or portion of the provision were not part of this Agreement.

9.2 No action taken pursuant to this Agreement should be deemed to constitute a waiver of compliance with any representation, warranty, covenant or agreement contained in this Agreement

and will not operate or be construed as a waiver of any subsequent breach, whether of a similar or dissimilar nature.

9.3 This Agreement is governed by the laws of the State of Georgia without regard to conflicts of law principles thereof. Should any part institute suit concerning this Agreement, venue shall be in the Superior Court of DeKalb County, Georgia. Should any provision of this Agreement require judicial interpretation, it is agreed that the court interpreting or construing the same shall not apply a presumption that the terms hereof shall be more strictly construed against one party by reason of the rule of construction that a document is to be construed more strictly against the party who itself or through its agent prepared the same, it being agreed that the agents of all parties have participated in the preparation thereof.

**ARTICLE 10
BINDING EFFECT**

This Agreement shall inure to the benefit of, and be binding upon, the respective Parties' successors.

**ARTICLE 11
COUNTERPARTS**

This agreement may be execute in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

[SIGNATURE PAGES FOLLOW]

March 12, 2018

IN WITNESS WHEREOF, the County and City have executed this Agreement through their duly authorized officers on the day and year indicated below.

DEKALB COUNTY, GEORGIA

Michael L. Thurmond (SEAL)
Chief Executive Officer
DeKalb County, Georgia

Date

ATTEST:

Barbara H. Sanders-Norwood
Clerk of the Board of Commissioners of DeKalb County, Georgia

APPROVED AS TO SUBSTANCE:

APPROVED AS TO FORM:

Zachary L. Williams
Executive Assistant/Chief Operating Officer

Marian C. Adeimy
Assistant County Attorney

CITY OF TUCKER, GEORGIA

Frank Auman (SEAL)
Mayor, City of Tucker, Georgia

Date

ATTEST:

APPROVED AS TO FORM:

City Clerk

City Attorney

APPENDIX "A" – TUCKER PARK PROPERTY

| PARK SITE | ADDRESS | PARCEL ID | PARK ACREAGE* | FACILITIES / AMENITIES |
|-----------------------------------------|------------------------------|--------------------------------|----------------------|----------------------------------------------------------------------|
| Montreal | 1341 Montreal Road E | 18-144-06-001 | 9 | Playground |
| John's Homestead | 3071 Lawrenceville Highway | 18-165-02-005 | 48 | 2 Lakes |
| Henderson | 4000 Henderson Park Road | 18-252-01-022 | 120.7 | 6 Soccer Fields, 4 Tennis Courts, 1 Playground |
| Cofer (2 Parcels) | 4259 & 4276 North Park Drive | 18-253-04-001 18-253-05-001 | 20 | 2 Ball fields, 1 Pool, 1 Restroom |
| Tucker Park (Tucker Nature Preserve) | 4408 Lawrenceville Highway | 18-225-01-017 | 15 | Natural Walking Trail System |
| Lake Ivanhoe | 2856 Rotherwood Drive | 18-260-03-001 | 1 | Open Space / Undeveloped |
| Peters | 1832 Clark Drive | 18-185-04-022 | 4 | 1 Multi-use Court, Paved Trail, Open Field, Pavilion |
| Smoke Rise | 5623 Hugh Howell Road | 18-181-04-001 | 12.54 | Natural Walking Trail System |
| Smoke Rise II (Smoke Rise Crossing) | 5956 Hugh Howell Road | 18-174-02-003 | 5.6 | Natural Walking Trail System |
| Smoke Rise Lord (Smoke Rise III) | 5525 Smoke Rise Drive | 18-180-01-065 | 29.5 | Greenspace / Undeveloped |
| Estimated Park Acreage: | | | 265.34* | <i>*Total acreage to be confirmed by deed and legal description.</i> |